

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	
	:	
- v. -	:	19 Cr. 374 (JMF)
	:	
MICHAEL AVENATTI,	:	
	:	
Defendant.	:	
	:	
-----	X	

**GOVERNMENT’S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT’S RENEWED MOTION TO TRANSFER**

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PRELIMINARY STATEMENT

Defendant Michael Avenatti has renewed his motion to transfer this case to the Central District of California pursuant to Rule 21 of the Federal Rules of Criminal Procedure. As the Honorable Deborah A. Batts already correctly concluded, evaluation of the *Platt* factors weighs decisively against transfer of this case, as many of those factors, including, most notably, the location of witnesses and the events at issue, strongly favor trial in the Southern District of New York, where the defendant was indicted. Far from being undercut, this conclusion is further bolstered by public health concerns created by the COVID-19 pandemic, which counsel against requiring witnesses, law enforcement agents, and prosecutors to travel from New York to California to try a case in which the fraud and its investigation centered around New York City. Such an outcome would be contrary to application of the *Platt* factors and in the interest of no one but the defendant himself.

Moreover, much like his first motion to transfer, the defendant's argument turns on a single, faulty premise: that transfer of this case to the Central District of California would necessarily result in consolidation of this case with another criminal case currently pending in that district, *United States v. Avenatti*, No. 19 Cr. 61 (JVS) (the "California Prosecution"). (Dkt. No. 56-1 ("Def. Mem.") at 2.¹) This premise was previously rejected by Judge Batts in denying the defendant's initial motion to transfer and the defendant offers no basis to revisit that conclusion. *See generally United States v. Avenatti*, No. 19 Cr. 374 (DAB), 2019 WL 4640232 (S.D.N.Y. Sept. 24, 2019). To the contrary, as described below, the defendant's own recent litigation strategy in

¹ Because the defendant's memorandum in support of his motion does not contain page numbers, page references for the defendant's memorandum in support of his renewed motion to transfer are to the ECF pagination of Dkt. No. 56-1.

the California Prosecution—where he intends to seek severance of the counts already pending against him—substantially undercuts any notion that the defendant intends to and would ultimately proceed with a single trial on all of the charges pending against him in both districts.

Accordingly, the defendant’s motion to change venue should be denied because venue is proper in the Southern District of New York, the defendant cannot overcome the presumption of trial in the venue in which he was charged, and there is no valid basis for transfer to the Central District of California.

BACKGROUND

I. The Charges

On May 22, 2019, a grand jury sitting in this District charged the defendant with wire fraud and aggravated identity theft, in violation of Title 18, United States Code, Sections 1028A, 1343, and 2. The charges stem from the defendant’s efforts to deceive a Manhattan-based literary agent and Manhattan-based publisher, through the use of wires sent to Manhattan, in order to intercept payments intended for the defendant’s client (“Victim-1”), who resides in Louisiana and Texas. Specially, and as alleged more fully in the Indictment, from August 2018 through February 2019, the defendant, an attorney, engaged in a scheme to defraud Victim-1, who was one of his clients at that time, by diverting money owed to Victim-1 to the defendant’s control and use. (Indictment ¶ 1.) After assisting Victim-1 in securing a book contract with a publisher in Manhattan, the defendant stole a significant portion of Victim-1’s advance on that contract by sending a fraudulent and unauthorized letter purporting to contain Victim-1’s signature to Victim-1’s literary agent in Manhattan. (*Id.*) That letter instructed the agent to send payments not to Victim-1 but to a bank account controlled by the defendant. (*Id.*)

The California Prosecution involves wide-ranging allegations that the defendant embezzled millions of dollars that should have been paid to various other clients, failed to file income tax returns and failed to pay the Internal Revenue Service (“IRS”) millions of dollars in taxes, submitted fraudulent loan applications that included tax returns never filed with the IRS, and concealed assets from the Bankruptcy Court. For those crimes, the defendant has been charged with 10 counts of wire fraud, 19 tax-related offenses, two counts of bank fraud, four counts of bankruptcy fraud, and one count of aggravated identity theft. All of the victims relevant to the California Prosecution’s case resided within the Central District of California during the events at issue in that case. The defendant’s trial in the Central District of California is scheduled to commence on December 8, 2020. (*See United States v. Avenatti*, 19 Cr. 61 (JVS) (C.D. Cal.), Dkt. No. 171.)

II. The Defendant’s Prior Motion to Transfer

On August 29, 2019, the defendant filed a motion seeking to transfer this case to the Central District of California under Federal Rule of Criminal Procedure 21 (Dkt. No. 19.) The defendant argued, in substance, that the California Prosecution and this case were of the same or similar character and transfer to California would be efficient because it would result in the cases being tried together. (*Id.* at 1.)

On September 24, 2019, the Judge Batts denied the defendant’s motion. *See generally Avenatti*, 2019 WL 4640232. Judge Batts examined each of the factors for discretionary transfer of venue set out by the Supreme Court in *Platt v. Minnesota Mining Co.*, 376 U.S. 240 (1964), and concluded that “[a]n examination of each of the *Platt* factors makes clear that this prosecution should not be transferred,” *Avenatti*, 2019 WL 4640232, at *2. Judge Batts found that the only

factor favoring transfer was the defendant's place of residence, though in the circumstances the weight of this factor was "slight[]." *Id.* at *3. On the other hand, Judge Batts found (1) that the location of witnesses weighed against transfer because trial witnesses were located predominantly in New York and not in California, *id.*; (2) that, because "the bulk of the alleged crime occurred in Manhattan," "the location of the events in issue strongly disfavors transfer," *id.* at *4; and (3) that, due to the costs of requiring both witnesses and the prosecution team to travel and relocate to California during the trial, the expense to the parties "weighs against transfer," *id.* at *5.

Judge Batts also carefully considered the defendant's arguments that the "the Indictment in this prosecution is 'virtually identical' to 'certain counts' in the Indictment filed in the California Prosecution," and concluded that "[h]is argument fails in numerous ways." *Id.* First, Judge Batts observed that there could be no assurance that a transfer to the Central District of California would result in the consolidation of the charges. *Id.* at *6. Second, Judge Batts held that "this case should not be consolidated with the California Prosecution because the prosecutions are not 'virtually identical' as Defendant alleges," noting the lack of overlap and dissimilarities between the charges and evidence in this case and the California Prosecution. *Id.*

As this Court recently noted, Judge Batts's findings, in addition to being manifestly correct, constitute the law of the case. (*See* Dkt. No. 53.)

III. Recent Proceedings

On March 23, 2020, following a joint proposal by the parties (*see* Dkt. No. 48), the Court adjourned the start of trial, which had previously been scheduled to commence on April 21, 2020, to July 14, 2020, in light of the public health conditions created by the COVID-19 pandemic (*see* Dkt. No. 49). The Court also directed the parties to advise the Court by May 15, 2020, as to

whether public health concerns required a further adjournment of trial. (*See* Dkt. No. 49.)

On April 27, 2020, the Honorable James V. Selna, United States District Judge for the Central District of California, presiding over the California Prosecution, held a telephonic status conference, a transcript of which is attached hereto as Exhibit A. The defendant and his counsel in the California Prosecution appeared by telephone (*see* Ex. A at 3), and at one point during the proceedings, the defendant himself spoke (*see id.* at 6). During that status conference, the defendant's attorney represented that he intended to file a motion for "severance of the counts as dissimilar." (*Id.* at 9.)

On May 15, 2020, the parties jointly filed a letter in this case, as directed by the Court, stating that the parties agreed that ongoing public health concerns mandated a further adjournment of trial in this case. (*See* Dkt. No. 50.) The Court adjourned the trial to October 13, 2020, and directed the parties again to advise the Court 60 days prior to the scheduled beginning of trial as to whether the parties believed that a further adjournment of trial was warranted by public health conditions. (Dkt. No. 51.) Also on May 15, 2020, the defendant filed a separate letter announcing his intention to renew his motion for a transfer of this case to the Central District of California, "[i]n light of the COVID-19 pandemic, the alleged loss amount, and the significant judicial and juror resources (and risk) associated with a separate trial in this matter." (Dkt. No. 52.)

On June 1, 2020, Judge Selna held a further telephonic status conference in the California Prosecution, a transcript of which is attached hereto as Exhibit B. The defendant and his counsel in the California Prosecution both appeared by telephone, and the defendant himself spoke on multiple occasions. (*See* Ex. B at 3, 5, 6.) During that telephone conference as well, the defendant's attorney stated his intention to move for a severance in the California Prosecution.

(*Id.* at 17.)

On June 11, 2020, the defendant filed the instant renewed motion for transfer of venue. The defendant argues that, in light of the COVID-19 pandemic, this case should be transferred “to the Central District of California so that it may be consolidated and tried together” with the California Prosecution, which, the defendant contends, would conserve “judicial and juror resources, as well as . . . protect[] . . . the public from exposure to” COVID-19. (Def. Mem. 2.)

ARGUMENT

The defendant’s renewed motion to transfer rests entirely on a faulty premise: that transfer of this case to the Central District of California would result in consolidation of this case with the California Prosecution, and therefore only one trial (with one jury) instead of two. In fact, this argument has already been rejected by Judge Batts—a conclusion that the defendant offers no basis to revisit—and is undermined by the defendant’s own litigation strategy in the California Prosecution, where he endeavors to sever the counts already pending against him in that case into multiple trials. What is more, the conditions created by the COVID-19 pandemic, the only basis the defendant relies upon in support of renewal of his motion, counsel against transferring this case to California, a result which would force witnesses principally based in this District, as well as the prosecution team, to travel to California. The defendant, who does not dispute that venue is proper in the Southern District of New York, has still not met his burden of showing that he is entitled to a transfer. The defendant’s motion should be denied.

I. Applicable Law

“As a general rule a criminal prosecution should be retained in the original district” where the case was charged. *United States v. Posner*, 549 F. Supp. 475, 477 (S.D.N.Y. 1982); *accord*

United States v. Kirk Tang Yuk, 885 F.3d 57, 74 n.5 (2d Cir. 2018). Discretionary transfers of venue are governed by Federal Rule of Criminal Procedure 21(b), which provides that, “for the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to that defendant or any one or more of the counts thereof to another district.” Fed. R. Crim. P. 21(b). The “burden is on the moving defendant to justify a transfer under Rule 21(b).” *United States v. Spy Factory, Inc.*, 951 F. Supp. 450, 464 (S.D.N.Y. 1997) (quotation marks omitted).

In *Platt*, the Supreme Court introduced a list of factors that courts routinely consider in analyzing a defendant’s motion to transfer venue: (1) location of defendant; (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of defendant’s business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of place of trial; (9) docket condition of each district involved; and (10) any other special elements that might affect the transfer. *Spy Factory, Inc.*, 951 F. Supp. at 455 (citing *Platt*, 376 U.S. at 244). “No one of these considerations is dispositive, and it remains for the court to try to strike a balance and determine which factors are of greatest importance.” *United States v. Maldonado-Rivera*, 922 F.2d 934, 966 (2d Cir. 1990) (quotation marks and brackets omitted).

II. Discussion

The defendant contends that “[t]he COVID-19 pandemic implicates two aspects of the *Platt* analysis”—the docket condition of each district involved and any other special elements that might affect the transfer—and further asserts that re-balancing the factors in light of such implications should result in transfer of this case, notwithstanding Judge Batts’s prior conclusion

to the contrary. (Def. Mem. 4.) The defendant's arguments as to each factor turn on the claim that transfer of this case to the Central District of California would necessarily result in consolidation with the California Prosecution and one trial on all of the charges currently pending in both cases. (*See id.*) According to the defendant, such a transfer would therefore have the effect of reducing strain on the combined dockets of the two districts involved and would protect potential jurors by obviating the need for jurors to be called only for this case.

That argument is wrong. First, Judge Batts previously explained that there could be no assurance that a transfer of this case to the Central District of California would result in the consolidation of the charges, and, indeed, held that "this case should not be consolidated with the California Prosecution because the prosecutions are not 'virtually identical' as Defendant alleges." *Avenatti*, 2019 WL 4640232, at *6. The defendant offers no argument, let alone a sufficient basis, for reconsidering this conclusion, which represents the law of the case. (*See* Dkt. No. 53.) Second, the defendant's own litigation strategy in the California Prosecution only further confirms the accuracy of Judge Batts's conclusion. The defendant, though counsel, has repeatedly announced his intention to seek severance of the counts he currently faces in the Central District of California (which, of course, would result in multiple venires for the California Prosecution even without the addition of the charges in this case). It is impossible to reconcile the defendant's argument here that a transfer would accomplish the goal of a single trial with his position before Judge Selna in the California Prosecution. (*See* Ex. A at 9; Ex. B at 17.)

Moreover, the defendant's assessment of the effect of the COVID-19 pandemic on this case ignores the *Platt* factors that weigh heavily in favor of retaining venue of this case in the Southern District of New York, and with more force in light of the current pandemic. With respect

to the second *Platt* factor—location of witnesses—Judge Batts observed that the witnesses to the defendant’s scheme who will provide “the core testimony at trial” are largely based in Manhattan, rather than California, and concluded that that factor disfavored transfer. *Avenatti*, 2019 WL 4640232, at *3. Indeed, although the Government has identified some potential witnesses in California, the majority live either in the New York City area or in Louisiana and Texas, not in California. The defendant offers no argument as to how or why Judge Batts’ finding in this respect was erroneous or has changed in light of the pandemic. Similarly, with respect to the final *Platt* factor—special circumstances—Judge Batts noted that “relocating the entire Manhattan-based prosecution team would be unduly burdensome to the Government and would be against the interests of justice.” *Id.* at *6. Again, the defendant is notably silent as to the finding, and relocation of witnesses and the prosecution team to California only weighs more heavily against transfer in light of the risks associated with travel during the COVID-19 pandemic.

Nor, for that matter, does the ninth *Platt* factor—docket conditions of the districts involved—weigh in favor of transfer in light of current circumstances, as the defendant contends. Transfer of this matter to the Central District of California—even if consolidated with the California Prosecution, and then tried together in one trial (despite the defendant’s request for severance)—would not only result in extending trial there by adding new, entirely separate conduct, but would naturally cause further delay of that prosecution. The COVID-19 pandemic has undoubtedly complicated the conduct of proceedings in this and other courts, as it has for all manner of work, but as Judge Batts explained, “this District has a well-managed docket and the ability to hear this matter,” *id.* at *5, and there is no reason now to conclude that docket conditions favor transfer of this case to the Central District of California.

Finally, with respect to the defendant's professed concern for the potential jury pool (*see* Def. Mem. 2-4), notwithstanding his apparent efforts to sever the counts against him in the Central District of California, the possible number of venirees does not favor transfer. Protection of potential jurors—much like witnesses—is of course of central concern at all times, and particularly in light of the current pandemic, but as this Court has made abundantly clear, the Court has already taken and is continuing to take the safety of all parties, including jurors, witnesses, litigants, and court personnel, into account when scheduling and preparing for this trial, as is the Government. (*See* Dkt. Nos. 47, 49, 51, 58.) The defendant offers no reasons to believe a court in another district will be better equipped to protect the safety of potential jurors, nor is the Government aware of any. Trial in this District will therefore proceed as safely as possible and there is no reason to believe that transfer to another district of this case, or any other case, is warranted in these circumstances.

* * *

In sum, the defendant has offered nothing to disturb Judge Batts's well-considered findings, which apply with even greater force in light of current public health concerns. Nor should the Court exercise its discretion to transfer this case on the basis that it might be consolidated with the California Prosecution when such a consolidation is both unwarranted, *Avenatti*, 2019 WL 4640232, at *6, and counter to the defendant's apparent litigation strategy in the Central District of California (*see* Ex. A at 9; Ex. B at 17). The defendant has failed to overcome the presumption against transfer of venue and to satisfy his burden to prove that the circumstances of his case warrant a transfer to the Central District of California in the interest of justice.

III. CONCLUSION

For the reasons set forth above, the defendant's motion should be denied.

Dated: New York, New York
June 25, 2020

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

- - -

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

UNITED STATES OF AMERICA,) CERTIFIED TRANSCRIPT
Plaintiff,)
vs.)
MICHAEL JOHN AVENATTI,) SACR-19-00061-JVS
Defendant.)
-----)

(Per telephonic conference)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

April 27, 2020

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1 SANTA ANA, CALIFORNIA; MONDAY, APRIL 27, 2020; 9:00 A.M.

08:49 2 (Per telephonic conference)

09:00 3 THE CLERK: Item No. 1, SACR-19-00061-JVS, United
09:00 4 States of America versus Michael John Avenatti.

09:00 5 Appearances from the government, please.

09:00 6 MR. ANDRE: Good morning, Your Honor. Julian
09:00 7 Andre and Brett Sagel on behalf of the United States.

09:00 8 MR. STEWARD: Good morning, Your Honor. Dean
09:00 9 Steward for Mr. Avenatti. He has a waiver on file but is
09:00 10 with us by telephone.

09:00 11 THE COURT: Good morning. This is Judge Selna.

09:00 12 Preliminarily I find that it is appropriate to
09:00 13 conduct this status conference via telephone given the
09:00 14 current circumstances. As noted, Mr. Avenatti has a waiver
09:00 15 of physical presence and is also on the line.

09:00 16 I would also note on the docket a telephone
09:00 17 call-in number and the access code were public. I find that
09:00 18 that meets the public's interest in being able to monitor
09:01 19 and listen to this proceeding. I find that the public's
09:01 20 interest has been satisfied given these unusual
09:01 21 circumstances.

09:01 22 Okay, let's proceed. We have apparently in place
09:01 23 a schedule which leads to a trial at the end of the summer.

09:01 24 My first question is what is the status of
09:01 25 discovery?

09:01 1 MR. ANDRE: Your Honor, this is Julian Andre.

09:01 2 The status of discovery is largely the same as it
09:01 3 was in the report we filed on February 18, 2020. The
09:01 4 Privilege Review Team did complete the productions to the
09:01 5 defense that we had identified in that report in early
09:01 6 March 2020. So at this point the defense should have either
09:02 7 access to all the devices or the materials that the
09:02 8 Privilege Review Team identified as being within the scope
09:02 9 from the devices such as the server or EA Employee 1
09:02 10 computers that were found at that residence.

09:02 11 We do anticipate there may be some additional
09:02 12 discovery in terms of materials that are generated in
09:02 13 preparation for trial, and we anticipate that the
09:02 14 prosecution team as to materials that have been released to
09:02 15 us will be providing some additional productions. Those
09:02 16 will be largely duplicative of the materials that the
09:02 17 defense already has access to.

09:02 18 THE COURT: Mr. Steward.

09:02 19 MR. STEWARD: Yes, Your Honor. We have a couple
09:02 20 of issues. One of them and the most important from my
09:02 21 perspective is that Mr. Avenatti has been unable to review
09:02 22 anything since his arrest back in January, so we have in
09:03 23 essence lost about three-and-a-half months where he has been
09:03 24 unable to work on this case at all. The logistics of
09:03 25 getting him material and information in his current

09:03 1 situation I am thinking about and going to try and come up
09:03 2 with some solutions.

09:03 3 We also have a protective order in place on a
09:03 4 great deal of material. Him being able to review the
09:03 5 various devices is again something that I'm trying to figure
09:03 6 out what's the most expeditious way to do it giving him
09:03 7 access and at the same time recognizing the constraints of
09:03 8 the protective order.

09:03 9 In terms of the material that is in Los Angeles
09:03 10 with the filter team, specifically we had looked at e-mails
09:04 11 some months back on two different occasions, and how we're
09:04 12 going to accommodate that now I'm not sure. What we did the
09:04 13 very first time was to give their IT person a list of names.
09:04 14 They ran those names and gave us whatever e-mails were
09:04 15 attached to those names. We may be able to do something
09:04 16 similar now, not just names but also organizations or dates
09:04 17 or whatever, but that needs to be worked out as well.

09:04 18 I will say that the filter team has been very
09:04 19 accommodating. Unfortunately, they only have one IT guy for
09:04 20 their entire office, which is the Los Angeles Office of the
09:04 21 Criminal Division of the IRS, so the poor gentleman is
09:04 22 stretched pretty thin. But they have been cooperative, and
09:04 23 my intent is to work with them in the coming days and try to
09:05 24 get whatever it is that Mr. Avenatti and I feel is relevant
09:05 25 and helpful to the defense.

09:05 1 That's kind of where we are right now. We're
09:05 2 going to take it at a day at a time and do the best we can,
09:05 3 and we will see where we are.

09:05 4 MR. ANDRE: Your Honor, this is Julian Andre. May
09:05 5 I respond briefly to a couple of points raised by Mr.
09:05 6 Steward?

09:05 7 THE COURT: Go ahead.

09:05 8 MR. ANDRE: First of all, with respect to the
09:05 9 protective order -- and I believe we put this in a response
09:05 10 to their continuance request -- there is nothing in the
09:05 11 protective order that precludes the defendant from accessing
09:05 12 any of these materials.

09:05 13 I would also note that in the conditions of
09:05 14 release that the government proposed and the defendant
09:05 15 agreed to there were certain ways that he would still be
09:05 16 able to review materials. I also don't think it's accurate
09:06 17 to say that it was impossible for Mr. Avenatti to review
09:06 18 discovery or work on this case since January. I just wanted
09:06 19 to raise this point because there should be not be any
09:06 20 impediment to Mr. Avenatti being able to review materials in
09:06 21 this case. He has had quite some time with these materials.

09:06 22 THE DEFENDANT: Your Honor, this is Mr. Avenatti.
09:06 23 Is it appropriate for me to provide some background
09:06 24 information?

09:06 25 MR. STEWARD: No, Mr. Avenatti, it is not. This

09:06 1 is Mr. Steward. I'm going to ask you not to speak.

09:06 2 THE DEFENDANT: Okay.

09:06 3 THE COURT: Mr. Steward noted that the defense had
09:06 4 lost three-and-a half months. I also note that we pushed
09:06 5 the trial out.

09:06 6 In terms of the preparation for trial. I think I
09:06 7 would like to schedule another status conference at the
09:07 8 beginning of June.

09:07 9 MR. SAGEL: This is Brett Sagel. I believe we
09:07 10 have one on June 1.

09:07 11 THE CLERK: We have one on May 26 that I have down
09:07 12 for a telephonic conference at 8:00 a.m. I will look at the
09:07 13 docket and confirm, but that's what I have.

09:07 14 MR. SAGEL: The date that I have that was in the
09:07 15 last order is we have expert disclosures on May 26 and then
09:07 16 a status conference at 9:00 a.m. on June 1.

09:07 17 THE CLERK: I also have one on June 1. Clearly we
09:07 18 wouldn't need both of them.

09:07 19 THE COURT: Let's just go to the June 1 date.

09:07 20 Mr. Steward, what is the status of the case in
09:08 21 New York that has yet to go to trial?

09:08 22 MR. STEWARD: I believe the trial date is in July.

09:08 23 Mr. Avenatti, on this one, I will let you speak.
09:08 24 Is that right as to our trial date on that one?

09:08 25 THE DEFENDANT: Yes. The Court vacated the prior

09:08 1 trial date and set that trial date in July and is expecting
09:08 2 I believe a status report from counsel, both the government
09:08 3 and my defense counsel, in May noting whether that trial
09:08 4 date is realistic in light of everything that's going on,
09:08 5 including the current stay-away or lockdown orders, et
09:08 6 cetera, in New York City.

09:08 7 MR. STEWARD: Thank you, Mr. Avenatti.

09:08 8 THE COURT: The deadline for filing motions is
09:08 9 coming up. Can you give me a preview however brief about
09:09 10 what you anticipate in terms of pretrial motions? The
09:09 11 government.

09:09 12 MR. ANDRE: Your Honor, this is Julian Andre.

09:09 13 Currently we anticipate filing at least two
09:09 14 pretrial motions. We will be filing a motion to introduce
09:09 15 other acts evidence. These are on the basis that it was
09:09 16 part of the charged conduct but was not specifically
09:09 17 identified in the Indictment and is inextricably intertwined
09:09 18 with charges in the Indictment or is admissible under
09:09 19 404(b). We provided the defense with a very detailed notice
09:09 20 explaining what evidence we would seek to introduce on I
09:09 21 believe February 4 of this year. So that will be the first
09:09 22 motion.

09:09 23 We also are likely going to move to exclude --
09:09 24 well, we may move to exclude any sort of advice of counsel
09:10 25 defense. We have raised this issue with defense counsel

09:10 1 well over about two months ago whether they intended to
09:10 2 present any sort of advice of counsel defense for any of the
09:10 3 charges. We have not yet heard a response. Unless they
09:10 4 provide us with reciprocal discovery and identify that they
09:10 5 are planning to pursue such a defense, we intend to move to
09:10 6 exclude it.

09:10 7 THE COURT: Okay.

09:10 8 Mr. Steward, in terms of motions.

09:10 9 MR. STEWARD: At this point, Your Honor, severance
09:10 10 of the counts as dissimilar. And I am looking at another
09:10 11 Motion to Dismiss, but I don't want to say anything more
09:10 12 than that because I need to further investigate the facts
09:10 13 behind it. I don't want to shoot my mouth off at this point
09:10 14 without significant facts. I have it sort of sketched out
09:10 15 in my mind. It would involve Mr. Stolper, Mr. Sagel, and
09:11 16 perhaps others. That's all I can say at this point.

09:11 17 THE COURT: That's fine.

09:11 18 Are there any other matters anyone would like to
09:11 19 take up?

09:11 20 MR. ANDRE: Your Honor, this is Julian Andre.

09:11 21 One issue that I think will need to be addressed
09:11 22 soon is the matter of reciprocal discovery. Mr. Avenatti
09:11 23 and Mr. Steward actually are in a situation here where they
09:11 24 have access to a much broader range of evidence and data
09:11 25 than the government does. I mean, they have complete copies

09:11 1 of many of these devices, and they have more materials in
09:11 2 these devices than what was provided to the government from
09:11 3 the Privilege Review Team.

09:11 4 We think it's going to be critical here that the
09:11 5 defense be required to produce reciprocal discovery in a
09:11 6 timely manner. So what we would be requesting is that the
09:11 7 Court set a deadline for that. We are thinking mid June
09:12 8 would be appropriate. That would give the defense enough
09:12 9 time to identify those materials.

09:12 10 THE COURT: I understand no reciprocal discovery
09:12 11 has been provided at all by the defense. Is that accurate?

09:12 12 MR. ANDRE: That's accurate, Your Honor.

09:12 13 THE COURT: Mr. Steward, a deadline for --

09:12 14 MR. STEWARD: That's fine, Your Honor. Today I
09:12 15 have none. By mid June, I think we can meet that deadline.

09:12 16 THE COURT: Why don't we say you will make
09:12 17 reciprocal discovery no later than Friday, June 19. That
09:12 18 will be reflected in the minutes.

09:12 19 Anything else?

09:12 20 MR. ANDRE: Nothing from the government at this
09:12 21 time, Your Honor.

09:12 22 MR. STEWARD: Nothing from the defense, Your
09:12 23 Honor.

09:12 24 THE COURT: Okay. Very good. Thank you.

09:12 25 MR. ANDRE: Thank you.

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MR. STEWARD: Thank you.

(Whereupon, the proceedings were concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: May 26, 2020

/s/ Sharon A. Seffens 5/26/20

SHARON A. SEFFENS, U.S. COURT REPORTER

EXHIBIT B

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3
4 UNITED STATES DISTRICT COURT
5 CENTRAL DISTRICT OF CALIFORNIA
6 SOUTHERN DIVISION

7 - - -

8 THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

9 UNITED STATES OF AMERICA,) CERTIFIED TRANSCRIPT
10 Plaintiff,)
11 vs.) SACR-19-00061-JVS
12 MICHAEL JOHN AVENATTI,)
13 Defendant.)
14 -----)

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 Santa Ana, California

17 June 1, 2020

18
19 SHARON A. SEFFENS, RPR
20 United States Courthouse
21 411 West 4th Street, Suite 1-1053
22 Santa Ana, CA 92701
23 (714) 543-0870
24
25

SHARON A. SEFFENS, U.S. DISTRICT COURT REPORTER

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17 ALSO PRESENT:

18 Michael Avenatti, Defendant
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08:45 22

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08:45 1 SANTA ANA, CALIFORNIA; MONDAY, JUNE 1, 2020; 9:01 A.M.

08:45 2 (Per telephonic conference)

09:01 3 THE CLERK: Item No. 1, SACR-19-00061-JVS, United

09:01 4 States of America versus Michael John Avenatti.

09:01 5 Appearances for the government, please.

09:01 6 MR. ANDRE: Good morning. Julian Andre and Brett

09:01 7 Sagel on behalf of the United States.

09:01 8 THE CLERK: For the defendant.

09:01 9 MR. STEWARD: Dean Steward for Mr. Avenatti. We

09:01 10 have a waiver on file. I believe Mr. Avenatti is also

09:01 11 participating in this conference call.

09:01 12 THE COURT: Good morning. This is Judge Selna.

09:01 13 I need to make a couple of preliminary findings.

09:01 14 First, Mr. Avenatti needs to consent to conducting this

09:01 15 status conference via telephone conference.

09:01 16 THE DEFENDANT: Good morning, judge. I do, Your

09:01 17 Honor.

09:01 18 THE COURT: I find it's appropriate to proceed

09:01 19 telephonically given the interests of justice and pressing

09:01 20 forward in this case and considering the public health

09:01 21 factors. As of this weekend, there were more than 6,500

09:02 22 infections reported in Orange County. With the number

09:02 23 increasing, I believe the public's interest is adequately

09:02 24 recognized under the circumstances given that the docket

09:02 25 posted provides the teleconference number that allows any

09:02 1 member of the public to dial in and listen to this telephone
09:02 2 conference.

09:02 3 There are a number of topics to cover. I would
09:02 4 like to begin with the government's recent production of
09:02 5 approximately 600,000 pages of --

09:02 6 Mr. Steward, do you know anything further on that
09:02 7 topic?

09:02 8 MR. STEWARD: Only that the government seems to
09:02 9 switch back and forth between pages and documents. It's my
09:02 10 understanding a document could have 100 pages, 200 pages,
09:02 11 and the only relevant description is the page because we are
09:02 12 trying to determine how much time it's going to take the
09:03 13 defense. If we could speak about only pages, I think that
09:03 14 would be more helpful in talking about documents.

09:03 15 THE COURT: Did you receive the government's
09:03 16 letter on May 8, 2020, from Mr. Andre to you?

09:03 17 MR. STEWARD: Yes.

09:03 18 THE COURT: Doesn't the government point out that
09:03 19 there is substantial duplication of prior production?

09:03 20 MR. STEWARD: Yes.

09:03 21 THE COURT: Doesn't the government specifically
09:03 22 provide the Bates number for the duplicate documents?

09:03 23 MR. STEWARD: No. The material that we received
09:03 24 from the filter team is not Bate stamped.

09:03 25 THE COURT: I am looking at Mr. Andre's letter

09:04 1 which is attached as Exhibit 1 to the government's most
09:04 2 recent filing over the weekend. Paragraph two says:
09:04 3 "Please note that almost all of these discovery materials
09:04 4 USAO_00460670 to USAO_0112495 are duplicative of the server
09:04 5 materials that the privilege team previously produced to you
09:04 6 on March 13, 2020." Then it goes on to provide some
09:04 7 specific references.

09:04 8 In addressing this issue, do you not believe that
09:04 9 the material for the Court's consideration to be advised
09:04 10 that the production is duplicative?

09:04 11 MR. STEWARD: Yes, absolutely, but the problem is
09:04 12 I can't tell what is duplicated and what's not because of
09:05 13 the lack of Bates numbers on the filter team material.

09:05 14 THE COURT: Even so, I believe it's material to my
09:05 15 consideration to assess this problem to note that there
09:05 16 is -- I'm troubled by the fact that no where in your filing
09:05 17 did you mention that in your status report updated May 27.

09:05 18 Sir, I expect a greater degree of candor going
09:05 19 forward. That's a material fact that should have been
09:05 20 presented to the Court along with your concerns about the
09:05 21 production.

09:05 22 MR. STEWARD: Understood, Your Honor.

09:05 23 THE DEFENDANT: It was included on Page 4,
09:05 24 Footnote 5, actually.

09:05 25 THE COURT: Who is that speaking?

09:05 1 MR. STEWARD: That was my client, Your Honor.
09:05 2 That's the disadvantage of doing this by telephone. He
09:06 3 can't whisper in my ear. But he is correct. If the Court
09:06 4 would take a look at Page 4, Footnote 5, of my
09:06 5 teleconference filing.

09:06 6 THE COURT: Okay.

09:06 7 Remarks.

09:06 8 THE DEFENDANT: Your Honor --

09:06 9 THE COURT: Mr. Avenatti, you don't get to speak.

09:06 10 THE DEFENDANT: Understood, Your Honor. Sorry
09:06 11 about that.

09:06 12 THE COURT: In the order I sent out, it provided
09:06 13 some thoughts for this hearing and raised the possibility of
09:06 14 providing Mr. Avenatti a disabled laptop with the discovery
09:06 15 on it. I don't see why that can't be done and can't be done
09:06 16 promptly.

09:06 17 MR. STEWARD: This is Mr. Steward.

09:06 18 Your Honor, I agree with the understanding that
09:06 19 it's -- there's too much to load on just one laptop. I
09:07 20 think what we have to do is give him the disks and hard
09:07 21 drives and that sort of thing. But the bottom line is I
09:07 22 agree with that.

09:07 23 MR. ANDRE: This is Julian Andre on behalf of the
09:07 24 U.S. Attorney's Office.

09:07 25 With respect to a computer, we have no objection

09:07 1 to Mr. Avenatti being provided a computer. Had this been
09:07 2 raised to us weeks ago, we would have set it up. We have no
09:07 3 objection to Mr. Steward providing the defendant a disabled
09:07 4 computer. I think the only thing that we would suggest is
09:07 5 that Pretrial Services be advised of a computer and what
09:07 6 computer he will be using and at least be given an
09:07 7 opportunity to confirm that the computer has been disabled.

09:07 8 THE COURT: I would expect you to meet and confer
09:07 9 with Mr. Steward with regard to a computer and whatever
09:07 10 external devices you are going to need to have agreed
09:08 11 material loaded so that everybody knows what he gets and
09:08 12 what it's on.

09:08 13 MR. STEWARD: Yes, Your Honor, I'll do that.
09:08 14 Pretrial Services is not in a position to go out to his
09:08 15 place of residence at this time. For example, they did the
09:08 16 walk-through with a computer via video. But the Court's
09:08 17 suggestion is good one, and we can certainly do that.

09:08 18 THE COURT: I want a report by Friday how this is
09:08 19 going to be accomplished, and I expect this to be
09:08 20 accomplished in no less than seven days from today.

09:08 21 MR. ANDRE: Your Honor, Julian Andre.

09:08 22 May I briefly back up and respond to a couple of
09:08 23 points Mr. Steward raised regarding the discovery?

09:08 24 THE COURT: Go ahead.

09:08 25 MR. ANDRE: First, with respect to the Privilege

09:08 1 Review Team's production, obviously I never seen it, but our
09:08 2 understanding is that our start team 2020 production was in
09:09 3 fact Bate stamped. It was produced with database load
09:09 4 files. It would be fully searchable. Our understanding is
09:09 5 those documents were in fact Bates labeled and that they
09:09 6 should be able to in addition to the information we provided
09:09 7 quickly confirm that the information we provided was
09:09 8 accurate.

09:09 9 The other issue Mr. Steward mentioned is the
09:09 10 difference between pages and documents. The reason why we
09:09 11 focused on the number of documents is pretty simple. What a
09:09 12 lot of these materials included are all the litigation
09:09 13 documents for all of these cases. For example, if a witness
09:09 14 was deposed in connection with one of the three cases of
09:09 15 victims, that deposition is going to essentially be included
09:09 16 in the government materials. So it may be a 200-page
09:10 17 document, but it takes only one second to realize that
09:10 18 position of an expert witness is not relevant to the
09:10 19 allegations.

09:10 20 THE COURT: Okay. I want to move on to the IRS
09:10 21 terminal.

09:10 22 Mr. Steward, tell me physically what the process
09:10 23 was when you went to the IRS Office.

09:10 24 MR. STEWARD: We set up an appointment with the
09:10 25 filter team, and we met them at the Federal Building on

09:10 1 Los Angeles Street. They accompanied us up to the IRS
09:10 2 offices where there was a technical person from IRS. I
09:10 3 understand he is the only one in the district. What we did
09:10 4 was give him a list of e-mails -- people's names that we
09:11 5 wanted him to search. He did that, and after a half hour or
09:11 6 45 minutes, it came he came up with all of these e-mails
09:11 7 connected to the names of relevant people in the case, and
09:11 8 he then put them on a disk for us. So that was the first
09:11 9 time we did it.

09:11 10 The second time former counsel, Tom Warren, was
09:11 11 with him or his associate, and I don't know how they did it
09:11 12 the second time, but that's the way we did it.

09:11 13 THE COURT: Why can't that same process be carried
09:11 14 out remotely either by a teleconference or a zoom
09:11 15 conference? You're in touch with the IRS agent or this
09:11 16 person that works for them, this specialist. Give him the
09:11 17 search terms, and he produces a disk for you. Why can't
09:11 18 that be done?

09:11 19 MR. STEWARD: Well, we can do that, but part of
09:11 20 the problem is follow-up on it. In other words, we have got
09:12 21 to review it and then see what the follow-up would be.
09:12 22 Another part of the problem is I don't know whether they are
09:12 23 even around. I know most of the U.S. Attorneys are working
09:12 24 for home. I don't know whether the IRS or filter team are.
09:12 25 It's certainly something we can inquire about.

09:12 1 THE COURT: Well, I will ask Mr. Andre to gather
09:12 2 those facts and come back to you. You may have to review
09:12 3 what the search produces, but why can't the process of
09:12 4 providing a search term, getting the results, and then after
09:12 5 providing you a disk with those results go forward?

09:12 6 MR. STEWARD: I think we should absolutely try
09:12 7 that. I don't know whether there are other problems that I
09:12 8 can't anticipate, but we can certainly give that a shot and
09:12 9 see what happens.

09:12 10 THE COURT: Okay. In the report coming back to me
09:12 11 on Friday with regard to the laptop, I'd like you also to
09:12 12 address providing remote access to the IRS terminal.

09:13 13 MR. ANDRE: Your Honor, we have concerns at this
09:13 14 point about their request that they be given kind of free
09:13 15 reign to the EA server. Obviously if they have reasonable
09:13 16 requests, we're happy to discuss that and accommodate them
09:13 17 to the best of our ability. But what they are asking us to
09:13 18 do is to recreate a process that was in place nine months
09:13 19 ago for that. I don't believe they demonstrated that that
09:13 20 is even necessary at this point.

09:14 21 THE COURT: Mr. Andre, you're going to give access
09:14 22 to that terminal. A sufficient showing has been made. You
09:14 23 just need to put in place the tools to allow them to do
09:14 24 that.

09:14 25 MR. SAGEL: This is Brett Sagel.

09:14 1 Our concern is Mr. Steward keeps complaining about
09:14 2 duplicative or numerous documents. Anything he is going to
09:14 3 have access to in that terminal -- which we're not opposing
09:14 4 what you're saying, but what he should look at is the
09:14 5 e-mails -- the references that he has in his 600,000 pages
09:14 6 of material that were produced from that server first to see
09:14 7 what he is missing.

09:14 8 The problem is when he was given access to those
09:14 9 computers and those devices last September and October he
09:15 10 did not have any of that produced in discovery. That's why
09:15 11 we made it available for him. The government went to great
09:15 12 expense and resources. That's not the case right now.
09:15 13 Right now he does have all of that. He hasn't even
09:15 14 mentioned one thing he thinks he is missing. I'm not sure
09:15 15 what he has even looked at to know what he thinks he's
09:15 16 missing.

09:15 17 From someone who has looked through most of what's
09:15 18 there, it's pretty voluminous, and it's hard to believe what
09:15 19 else out is out there. He has got the entire victim folders
09:15 20 that were on the share drives, as well as all the e-mails
09:15 21 between all those individuals.

09:15 22 THE COURT: Well, Mr. Steward, you're going to
09:15 23 have to make a good-faith effort to analyze what you have
09:15 24 and what you need rather than reinventing a complete wheel
09:15 25 through the IRS terminal.

09:15 1 MR. STEWARD: I will do that, Your Honor.

09:15 2 THE COURT: Okay. Let's talk about a trial date.

09:16 3 The government didn't address that issue in its response.

09:16 4 MR. ANDRE: Your Honor, we're happy to do it now.

09:16 5 This is Julian Andre.

09:16 6 Our position is that we -- we obviously recognize
09:16 7 COVID-19 is an issue in this district and across the country
09:16 8 and that a further continuance is necessary at this point
09:16 9 and could be necessary again in the future. Our position is
09:16 10 that right now COVID-19 is a reasonable basis for a
09:16 11 continuance in this case.

09:16 12 THE COURT: The assumption is that the existence
09:16 13 of COVID-19 has had no impact on the defense's ability to
09:16 14 prepare. That said --

09:16 15 MR. ANDRE: Your Honor, I understand the point the
09:16 16 Court is raising. That being said, the Court has already
09:17 17 fairly recently continued the trial three months. We would
09:17 18 request that the Court set the earliest trial date that the
09:17 19 Court believes it may be able to hold a criminal jury trial.
09:17 20 I think the Court might have a better sense of that. We
09:17 21 were thinking September 15, which would be one month.
09:17 22 Obviously we recognize that could change again.

09:17 23 We strongly oppose what they have requested. They
09:17 24 have given two options, either February 2021 or just vacate
09:17 25 the date and wait until the end of August, which would have

effectively the same impact as waiting until 2021.

This case has been pending for 14 months. We understand what COVID-19 does. It's very challenging. It may well create challenges as far as preparation. It creates challenges for the government, too. We bear the burden here, and we are dealing with the same challenges. But this case has been pending for 14 months. There's plenty that can be done to get ready for trial whether it's motion practice or other things. We would request the Court continue it a month at this point.

Then the other last point I would mention is that there are victims in this case, and those victims have statutory rights to proceedings without unnecessary delay. They have been waiting for their day in court a long time now, and to just continue this indefinitely would not be consistent with their rights or the public interests.

So our proposal would be the Court set this for the next available -- the first possible date the Court believes we may be able to hold a trial, and that additional time will hopefully also provide the defendant whatever additional time he needs to resolve any issues that have been caused by COVID-19.

THE COURT: I'm setting the matter down for a jury trial December 8, 2020, at 8:30 a.m. We'll do the final status conference November 23 at 9:00 a.m.

09:19 1 No one can predict with certainty that there is
09:19 2 probably a high likelihood that we will be able to proceed
09:19 3 in a manner that addresses everyone's concerns about the
09:19 4 logistics and mechanics of a trial. That's obviously
09:19 5 subject to further change in the conditions in the
09:19 6 United States, subject to further guidance from the Ninth
09:19 7 Circuit which has provided some further guidance from the
09:19 8 United States Judicial Conference and the Administrative
09:20 9 Office of the Courts.

09:20 10 I think we should put the case on a track that
09:20 11 gets that done. That means people need to get down to
09:20 12 business. That's why I want promptly in place the disabled
09:20 13 laptop for Mr. Avenatti and a scheme to pursue the IRS
09:20 14 terminal. So I will look for your report on those two
09:20 15 topics by the end of the week.

09:20 16 I would like to set another 9:00 a.m. next Monday
09:20 17 if that's convenient for everybody.

09:20 18 MR. ANDRE: 9:00 a.m. on Monday is fine for the
09:20 19 government.

09:20 20 THE COURT: Mr. Steward.

09:20 21 MR. STEWARD: Same for me, Your Honor, and my
09:20 22 client.

09:20 23 THE COURT: Okay.

09:20 24 MR. ANDRE: At this point, would the Court be
09:20 25 willing to take a waiver as to the Speedy Trial Act from the

09:20 1 defendant?

09:20 2 THE COURT: Oh, yes. I mean, either -- if I don't
09:21 3 see a written waiver within seven days, advise me that it's
09:21 4 not coming, and I'll make the required judicial findings
09:21 5 under the Speedy Trial Act to continue the trial to that
09:21 6 date.

09:21 7 MR. STEWARD: That's fine.

09:21 8 MR. ANDRE: There is one other issue I would like
09:21 9 to flag. This is Julian Andre. And it may be more
09:21 10 appropriate to save this to discuss next Monday.

09:21 11 There obviously have been raised some issues with
09:21 12 respect to counsel. Our view is that those issues need to
09:21 13 be resolved immediately, particularly given that -- although
09:21 14 there's some complications with respect to COVID-19, many of
09:21 15 the issues regarding counsel have been the same since last
09:21 16 July or last August. We would request that those issues be
09:21 17 addressed next Monday. We don't want to be three or four
09:21 18 months down the road and be dealing with the same thing
09:21 19 again and again.

09:22 20 THE COURT: Well, one of the items I noted in the
09:22 21 order I sent out was a date certain for the parties to
09:22 22 provide me the legal research as to the effect of a party
09:22 23 having but failing to apply resources in terms of a speedy
09:22 24 trial and other rights. So I would ask that I get that
09:22 25 memorandum by Friday separately from each side, and we will

09:22 1 discuss that Monday as well.

09:22 2 MR. ANDRE: Thank you very much.

09:22 3 MR. STEWARD: That's fine.

09:22 4 THE COURT: Mr. Steward, you give some indication
09:22 5 in your supplement, your status report, that additional
09:22 6 assistance is coming on. You can address that as well in
09:22 7 whatever you put in by Friday.

09:22 8 MR. STEWARD: I will do that, Your Honor.

09:22 9 THE COURT: Okay. With regard to your status
09:23 10 report, Mr. Steward, the local rules limit you to 25 pages.
09:23 11 I realize that when counsel enter briefs in a conventional
09:23 12 fashion it's about 28 lines. Perhaps the clock could be
09:23 13 alleviated if you did that. I expect you to file conforming
09:23 14 briefs. The court's resources are limited, and they're
09:23 15 tasked in a special way as everyone is tasked in performing
09:23 16 their role.

09:23 17 I would ask you to address relevant topics, that
09:23 18 is, relevant to me managing this case and the difficulties
09:23 19 which are presented going forward. Much of your brief
09:23 20 recounted Mr. Avenatti's experiences at MCC. While I'm sure
09:23 21 you have accurately described them, they don't assist me in
09:23 22 addressing case management issues in this case. I would ask
09:23 23 you going forward to concentrate on what we are about here
09:24 24 and present me complete but net expressions of your opinions
09:24 25 on the issues.

09:24 1 MR. STEWARD: Understood, Your Honor. The only
09:24 2 reason we included all that was Mr. Andre's statement that
09:24 3 my client would have had access to discovery in this case
09:24 4 while he was at the MCC. We were just trying to show that
09:24 5 that's not the case. The Court is very familiar with my
09:24 6 writing. I am usually very succinct.

09:24 7 THE COURT: I believe that's all the topics I want
09:24 8 to cover.

09:24 9 Any other matters anyone would like to address?

09:24 10 MR. ANDRE: This is Julian Andre.

09:24 11 Currently the motion deadline for this case was
09:24 12 actually on Monday. Our strong preference is that motions
09:24 13 continue forward. I understand move that off a couple of
09:25 14 weeks. But our view is motions should continue to proceed,
09:25 15 at least any motions that can be filed as soon as possible.

09:25 16 MR. STEWARD: Dean Steward.

09:25 17 The only problem is that -- well, a number of
09:25 18 problems, but the main problem is that motions are almost
09:25 19 always dependent on a thorough review of the discovery. I'm
09:25 20 not going to beat the horse any further, but we still have
09:25 21 an awful lot of work to do. A motion, for example, like
09:25 22 severance counts, which I intend to bring -- certainly we
09:25 23 can bring that at any time. But just about any other
09:25 24 motion -- for example, suppression motions are bound to
09:25 25 what's in the discovery, and we certainly have not completed

our review.

THE COURT: All dates will be continued commensurate with the trial date which I have announced based on the intervals of the existing order.

MR. ANDRE: If the Court is going to keep the existing schedule in place and just back everything up, would the Court like the government to file a proposed order?

THE COURT: Yes. Meet and confer and put in a stip waiving time or otherwise provide me with an order, yes.

MR. ANDRE: Thank you, Your Honor.

MR. STEWARD: That's fine, Your Honor.

THE COURT: Okay, thank you very much. We will visit with you again at 9:00 a.m. on Monday.

(Whereupon, the proceedings were concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
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regulations of the Judicial Conference of the United States.

Date: June 5, 2020

/s/ Sharon A. Seffens 6/5/20

SHARON A. SEFFENS, U.S. COURT REPORTER